

INFORMATION SHEET

DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: San Francisco District

FILE NUMBER: 400082N

REGULATORY PROJECT MANAGER: Dan Martel **Date:** 30 march 2007

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** **Date:**

At the project site (Y/N) Y **Date:** 26 Oct 2006

PROJECT LOCATION INFORMATION:

State: California

County: Solano

Center coordinates of site by latitude & longitude coordinates:

Approximate size of site/property (including uplands) in acres: 3 +/-

Name of waterway or watershed:

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	x								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				x	
Is or would be used as habitat by other migratory birds that cross state lines?				x	
Is or would be used as habitat for endangered species?				x	
Is used to irrigate crops sold in interstate commerce?		x			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Approved

ADDITIONAL INFORMATION SUPPORTING NJD

The parcel is a 3 +/- acre undeveloped property within a developed industrial park. A 1.5 to 2 ft high graded fill pad covers most of the site. The vegetation at the site is managed (mowed) and disced. At the time of the site inspection, the surface had recently been disced. In general, the surface of the unfilled perimeter was covered with *Distichlis spicata* (or its remnants) with *Avena*, *Foeniculum* and *Elymus*. There were no surface hydrologic indicators visible on the unbroken soil clods, and the soil was dark clay with few to none redox concentrations.

The delineation done by LSA Associates in June 2006 appeared to be a reasonable interpretation of wetland criteria. The areas identified as wetlands appear to be slight relative depressions. Only two areas had wetland characteristics at the time of inspection. There were no surface hydrologic connections from any of the proposed wetlands. A small 15 feet long ditch in the SE corner of the site was excavated to provide for the removal of irrigation water. The applicant had identified 5 small areas meeting criteria for wetlands and proposed that they are isolated from tributaries to navigable waters. Based upon observations and data collected during the site inspection, this is a reasonable presumption and the wetlands can be determined isolated and non-jurisdictional. This determination is consistent with the U.S. Supreme Court decision of January 9, 2001, concerning the *Solid Waste Association of Northern Cook County v. United States Corps of Engineers*, 531 U.S. 159 (2001), (hereinafter "SWANCC"). In the SWANCC decision, the Court invalidated, at least, portions of the Migratory Bird Rule as a nexus to the Commerce Clause and ruled that the Corps had exceeded its statutory authority in exerting jurisdiction over non-navigable isolated, intrastate waters that did not provide some other interstate or foreign commerce use (33 CFR § 328.3(a)(3)).